**IN THE HIGH COURT OF DELHI**
**RSA No.67/2007**

# S. Puran Singh ..... Appellant
! through: Mr.Daljinder Singh, Adv.

VERSUS

$ Sh. Shyam Lal ..... Respondent
^ through: Mr. R.C. Chopra, Adv.

RESERVED ON: 18.12.2007

% DATE OF DECISION: 20.12.2007

**CORAM:**

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Following substantial question of law needs to be answered in the above captioned second appeal :-

> "Whether the conclusions arrived at by the courts below are vitiated on account of non-consideration of relevant evidence?"

2. Above captioned second appeal arises out of the judgment and decree dated 5.9.2006 passed by the learned Additional District Judge, Delhi whereby the judgment and decree dated 15.2.2003 passed by the learned Civil Judge, Delhi which partly decreed the suit for possession, damages/mesne profits and permanent injunction filed by the appellant was set aside.

3. Case pleaded by the appellant in the plaint filed by him was that he was the owner of the property bearing municipal No.3407, Gali No.249, Hansa Puri, Tri Nagar, New Delhi. (here-in-after referred to as the suit property). That in the year 1996 on the request of the respondent, appellant gave a room in the suit property to the respondent to reside therein for a period of one year. After expiration of period of one year again on the request of the respondent the period was extended by a further period of six months. Thereafter even after repeated requests by the appellant the respondent failed to vacate the suit property. In the meantime appellant fell ill and had bypass surgery and did not pursue the matter with the respondent for about 2 years on account of his illness. That during the said period respondent started running a kiryana shop from the said room without taking permission from the appellant. That when the appellant recovered from his illness he issued a legal notice dated 11.7.2001 directing him to vacate the premises.

4. On the basis of afore-noted averments the plaintiff filed the suit praying:-

i) A decree for possession of the suit property.

ii) A decree for damages/mesne profits @ Rs.2000/- per month on the basis that market rate of rent of the properties of similar nature situated in the same locality is

Rs.2000/- per month.

iii) A decree for permanent injunction to restrain the respondent from creating any third party interest in respect of the suit property.

5. Defence set up by the respondent was that he was the tenant in respect of one room in the suit property. That the said room was let out by the appellant to him in the year 1985 at a monthly rent of Rs.150/-. That from the said shop he was running a kiryana shop. That in the year 1995 rent was enhanced to Rs.200/- per month. That he has paid rent till June, 2001. That appellant never issued any rent receipt.

6. In response to the defence set up by the respondent the appellant in the replication pleaded as under :-

> "2. Para No.2 is also false, wrong and denied and that of the petition is reafirmed. It is wrong that the defendant came in the shop in or about the year 1985 as a tenant at the rate of Rs.150/- per month and the defendant started a shop of kiryana. It is further wrong that in or about 1995 the rent of shop had been increased to Rs.200/- and the defendant has paid rent upto June, 2001 and he is ready and willing to pay the rent that may be legally payable. <u>It is stated the earlier one shri Sumair Chand was tenant upto July 1992 in the premises and after vacation of the said premises plaintiff had given this portion to the defendant at his request.</u> It is further wrong that the correctness of the plan is denied. It is further wrong that copy of the plan has not been supplied to the defendant." (underlining emhasized).

7. In support of his case appellant examined himself as PW-1 and one Mr.R.K.Gupta, Assistant Zonal Inspector, Keshav Puram Zone, MCD as PW-2.

8. Relevant part of the testimony of the appellant reads as under :-

> "Shyam Lal is occupier of one room of property at above said no. as also shown in the site plan. The site plan is Ex. PW1/2 which is correct as per site. Prior to occupation of Shyam Lal his brother was tenant in this portion as shown in the site plan.
>
> x x x x
>
> I have brought the original counter file of the rent receipt which 7.7.92 issued to Sh. Sumer Chand who was the brother of the defd. The original counter file receipt is Ex. PW1/7. (original has been removed from the rent receipt book today). The rent receipt bears the sig. Of Sumer Chand at point 'A' on the Ex. PW 1/7 which had been done in my presence.
>
> xxxxxxxxx by the counsel for the defendant
>
> It is incorrect to say that Sumer Chand was never my tenant in my premises shown in orange in the site plan. It is wrong to say that signature appearing on Ex. PW1/7 at point 'A' does not of Sumer Chand. It is incorrect to say that Sumer Chand was illiterate. It is further incorrect to say that Ex. PW1/7 is a forged document. I know the defd. even prior to 1992 as he used to visit the brother Sh. Sumer Chand. Sumer Chand left the premises in 1992 and this portion was given to the defd in the year 1996.
>
> x x x x
>
> I never demanded any rent or any damages from the defd for the portion occupied by the

defd. I never took even charges of electricity consumption.

x x x x

Sumer Chand was my tenant since 1985-86 and he was paying the rent @ 300/- continuing till the vacation of the property. Sumer Chand was also running a shop of Kiryana.

9. PW-2 proved the house tax assessment report of the suit property for the year 1999 as Ex.PW2/1.

10. A conjoint reading of the plaint and replication filed by the appellant and testimony of the appellant makes it clear that the case set up by the appellant is that :-

A. In the year 1985 appellant has inducted one Mr.Sumair Chand as a tenant in respect of one room of the suit property at a monthly rent of Rs.300/-.

B. Sumair Chand was running a kiryana shop from the said tenanted premises.

C. In the year 1992 Sumair Chand vacated the tenanted premises.

D. In the year 1996 defendant Shyam Lal who was the brother of Sumair Chand requested the appellant to let him reside in the said room.

E. Appellant agreed to the request of the respondent and allowed the respondent to occupy the said room for a period of one year.

F. Appellant had given the room to the respondent without taking any consideration, monetary or otherwise from the respondent.

G. When appellant directed the respondent to vacate the room he failed to do so.

11. In order to establish that Sumair Chand was a tenant in the suit property appellant produced a rent receipt book. One rent receipt was removed from the book and marked as Ex.PW1/7. Ex. PW1/7 purportedly bears the signatures of Sumair Chand. The signatures of Sumair Chand have been appended in the English language. Ex. PW1/7 pertains to the rent received by the appellant for the month 7.7.1992 to 6.8.1992. As per the rent receipt rent @ Rs.300/- per month was received by the appellant.

12. On behalf of the respondent, respondent and one Smt. Bimla Jain w/o of Sumair Chand were examined as DW-1 and DW-2 respectively.

13. In his testimony as DW-1 respondent deposed on the lines of defence taken by him in his written statement. He categorically denied that his brother Sumair Chand was a tenant in the suit property between the years 1985 and 1992. He also denied that rent receipt Ex. PW1/7 bears the signatures of Sumair Chand. He deposed that Sumair Chand did not know

English and used to sign in Hindi. He deposed that the rent receipt Ex. PW1/7 is a forged and fabricated document.

14. Smt. Bimla Jain DW-2 was the widow of Sumair Chand. She also denied that her husband Sumair Chand was a tenant in the suit property. She also deposed that Sumair Chand did not know English and used to sign in Hindi.

15. The first question before the learned Trial Court was whether the rent receipt Ex. PW1/7 was duly proved or not.

16. As regards the afore-noted question the learned Trial Court has opined as under :-

> "In regard to rent receipt Ex. P.W.-1/7 is concerned, as per defendant, the said rent receipt is not genuine and forged and fabricated document as it does not bears signatures of Late Sumer Chand. In this regard it is pertinent to mention here that the burden to prove this issue was on the defendant and it was the plea of the defendant that Ex. P.W.-1/7 does not bear signatures of Late Sumer Chand. But the defendant has not produced any document to compare the signatures of Late Sumer Chand on Ex.P.W.-1/7. It is basic law that a person who desires in Court to give findings in his favour then burden to prove lies on him but in the instant case as stated above the defendant has not produced any document to compare the signatures of Sumer Chand on rent receipt Ex. P.W.-1/7. It is not disputed that Sumer Chand is already died. In these circumstances, it is hold that rent receipt Ex.P.W.-1/7 is duly proved. I have carefully gone through the above said judgments on which ld. Counsel for defendant has relied and found that the findings of the judgments are not applicable to the facts of the instant case."

17. Having held that the appellant has duly proved the rent receipt Ex.PW1/7 the next question before the learned Trial Court was that whether from the testimony of the appellant and rent receipt Ex. PW1/7 a conclusion can be drawn that the respondent was in unauthorized occupation of the suit property. As regards this issue the learned Trial Court has opined as under :-

> "Now the question arises whether rent receipt Ex.P.W.-1/7 is helpful to the plaintiff or not? From rent receipt Ex. P.W.-1/7 it is proved that earlier Late Sumer Chand brother of defendant was tenant in the property in question @ of rent of Rs.300/- per month. The said rent receipt is dated 07.07.92. As per case of the plaintiff Sumer Chand has left the premises in question in the year 1992. But it is pertinent to mention here that during cross-examination of D.W.-1, a specific suggestion was put to D.W.-1 that Sumer Chand remained tenant in the property in dispute from 1985 to till his death in the year 1995. On further explanation by ld.counsel for plaintiff D.W.-1 has stated that Sumer Chand died towards end of 1995. Therefore, in these circumstances it is found that the plaintiff has given self contradictory statements as on one hand he has stated that Sumer Chand left the shop in the year 1992 and during cross-examination of D.W.-1 he put a specific suggestion to D.W.-1 that Sumer Chand remained tenant in the property in dispute from 1985 till his death 1995."

18. After disbelieving the case set up by the appellant the learned Trial Court has proceeded to consider whether the respondent successfully established the defence taken by him in his written statement. As regards this the learned Trial Court has held as under :-

> "On the other hand as per the case of the defendant, defendant is in possession of the shop since 1985 and late Sh. Sumer Chand brother of defendant never remained in possession of the property in question as tenant but as stated above the rent receipt dated 07.07.92 Ex. P.W.-1/7 issued by plaintiff in favour of late Sh. Sumer Chand is duly proved which shows that Sumer Chand was earlier in possession of suit property in 1992. It also casts suspicion regarding the trustworthiness of testimonies of D.W.-1 and even D.W.-2 in this regard. Therefore, it is found that both the parties are sailing in the same boat as per admissibility of their evidence is concerned on the above said grounds."

19. Having disbelieved the versions of both the parties the learned Trial Court had no option but to base its decision upon the conduct of the parties and other surrounding circumstances.

20. After considering the case in its entirety the learned Trial Court concluded as under :-

> "But now the question arises whether the defendant is licencee of the plaintiff or not? As per the case of the plaintiff, on this score I am not inclined to agree with the plaintiff as it does not appeal to the commonsence that a person shall give possession of the property to licencee without any consideration when earlier brother of the licencee was tenant in the same property @Rs.300/- per month and kept on sleeping for 5 years. Though it is submitted that the plaintiff was not in a position to issue any legal notice etc. to the defendant on the ground of his ill health but no medical document has brought on record that he was totally unable to start any legal proceedings against the defendant. Further the plaintiff has not brought on record any cogent reason that why and on what relation he has given the property in question to the defendant without any consideration. As matter of proved record and evidence earlier late Sumer Chand brother of defendant was tenant in the suit property who remained in possession till his death till 1995. It is

> also not disputed that late Sumer Chand was running a shop in the suit property and it is further also not disputed that at present defendant is also running a kiryana shop in the property in question.
>
> All these eventualities transpires that after death of Sumer Chand the defendant kept on running the shop earlier run by his brother late Sumer Chand. The preponderance of probabilities lies in favour of the defendant, in these circumstances. In these circumstances it is found that the defendant is in possession of the property as tenant of the plaintiff. At no stretch of time it came on record that rate of rent of premises in dispute is more than Rs.3,500/- per month. Therefore, the jurisdiction of this Court is barred in the light of Section 50 of Delhi Rent Control Act."

21. The decision of the learned Trial Court may be summarized as under :-

A. Holding that the possession of the respondent in respect of the suit property was in the capacity of a tenant and not a trespasser and that rate of the tenanted premises was less than Rs.3500/- per month the learned Trial Court dismissed the suit of the appellant in so far it prayed for a decree of possession and mesne profits.

B. Holding that the appellant has successfully established that he was the owner of the suit property the learned Trial Court passed a decree of permanent injunction in favour of the appellant restraining the respondent from creating any third party interest in the suit property or otherwise parting with the possession of the suit property.

22. Aggrieved by the decision of the Trial Court in

refusing to grant a decree for possession and mesne profits in his favour the appellant filed an appeal before the Court of Addl. District Judge, Delhi.

23. The learned Appellate Court concurred with the view taken by the learned Trial Court that possession of the respondent in respect of the suit property was in capacity of a tenant and not a trespasser. In coming to the said conclusion the learned Appellate Court has opined as under :-

> "The appellant also placed on record the counter foil of the rent receipt Ex. PW1/7 bearing his signatures. The signatures on the counter foil was denied by the widow of deceased Sh. Sumer Chand (who appeared in the witness box as DW2) first and then, in the cross examination when confronted with the said receipts, she could not say whether the said signatures were of Late Sh. Sumer Chand or not. If it is to be believed that the appellant had been issuing rent receipts regularly to his tenants, then, there is no reason why he has placed on record only one counter foil of the rent receipt(s) issued in seven years of his tenancy allegedly to the said Sh. Sumer Chand..... He could have filed all the counter foils of the rent receipts issued by him to the said Sh. Sumer Chand to show that he occupied the said premises as a tenant and was running a shop there."

24. However further holding that rent of the tenanted premises was less than Rs.3500/- per month and therefore the jurisdiction of the civil court is barred by virtue of Section 50 of the Delhi Rent Control Act, 1958 the learned Appellate Court has held that the learned Trial Court was not justified in granting a decree of permanent injunction in favour of the appellant. Thus, vide the judgment dated 5.9.2006 the learned

Appellate Court set aside the judgment and decree dated 15.2.2003 passed by the learned Trial Court in so far it granted a decree of permanent injunction in favour of the appellant.

25. The learned counsel for the appellant has urged following 2 grounds in support of the present appeal:-

A. That the courts below failed to take note of house tax assessment report Ex. PW2/1 which conclusively established that the respondent was not a tenant in the suit property.

B. That the courts below have not attached due importance to the rent receipt Ex. PW1/7 which established that brother of the defendant i.e. Sumair Chand was a tenant in the suit property. As a limb to this ground, the counsel further urged that the Appellate Court was wrong in holding that appellant filed only one rent receipt.

26. As already noted Ex.PW2/1 is the house tax assessment report of the suit property for the year 1999. Said report shows that when the property was inspected in the year 1999 the ground floor of the suit property was under the self occupation of the appellant. This in my opinion is of no use to the case of the appellant as it is contrary to the case of the appellant itself. It was the case of the appellant that there were various tenants in the suit property whereas as per the

said inspection report the entire suit property i.e. ground floor, first floor and second floor is shown to be under the self occupation of the plaintiff/appellant.

27. A perusal of the judgment as also record of the Trial Court shows that the appellant has produced the entire receipt book and not just one rent receipt. For the sake of convenience the entire rent receipt book was not exhibited but rent receipt was removed from the book and marked as Ex.PW1/7. Thus I agree with the learned counsel that the Appellate Court was wrong in basing its decision on the fact that the appellant has produced only one rent receipt.

28. The controversy in the present case revolves around the fact that whether the respondent was a tenant in the suit property or a lawful occupier who subsequently became a trespasser.

29. There is no document such as lease agreement, rent receipt etc. to establish the relationship between the parties.

30. The relationship of the parties thus has to be gathered from the conduct of the parties and overall circumstances.

31. Following circumstances need to be noted :-

A. Appellant has pleaded in the replication that the disputed premises were first let out to Sumair Chand who was

running a kiryana shop therein from the period 1985 to 1992. That Sumair Chand vacated the shop in the year 1992 and that till 4 years premises were lying vacant. That thereafter in the year 1996 the same were allowed to be occupied by the brother of Sumair Chand, i.e. respondent without taking any consideration/charges from him.

B It is highly improbable that the premises which were first let out to one Sumair Chand for commercial purposes were allowed to be occupied by his brother without taking any charges initially for a period of one year and thereafter extended by a further period of 6 months.

C Appellant has deposed that there were three other tenants in the suit property. It is highly improbable that the appellant allowed the respondent to occupy a portion of the suit property without taking any charges from him particularly when other portions of the suit property were let out by the appellant.

D As per the case of the appellant the disputed premises remained vacant for a period of 4 years. It is difficult to believe that the premises which were lying vacant for 4 years were allowed to be occupied by the respondent free of cost.

E Appellant has also not explained in his testimony or

else where as to why and in what circumstances Sumair Chand vacated the suit propety having been in the possession of the suit property for a considerable long period of 7 years.

F Appellant has deposed that even the charges of electricity consumption in respect of portion occupied by the respondent were paid by him.

G Appellant has not placed on record documents showing his medical condition.

H Appellant has not pleaded or deposed that the respondent was his friend or a relative. He has merely deposed that he knew the respondent as he was the brother of his tenant Sumair Chand. It is difficult to believe that even though there was no special relationship between the parties yet the appellant allowed the respondent to occupy the disputed premises free of cost for a period of 1 ½ years.

32. Afore-noted circumstances when considered together lead to a very strong inference that the possession of the respondent in respect of the suit property was in the capacity of a tenant and not a trespasser, probably the appellant allowed him to continue the business after Sumair Chand died.

33. Noting the evidence on record and peculiar circumstances of the case the view taken by the learned Trial

Court is quite probable that Sumair Chand was a tenant in the disputed premises and that after the death of Sumair Chand in the year 1995 the respondent kept on running the kiryana shop which was earlier run by his brother Sumair Chand. This was with the consent of the appellant.

34. I need not speculate. A case is decided as is projected by the parties in their pleadings and evidence brought on record. No evidence or pleading was led on the aspect by either of the parties that the tenancy of disputed premises was inherited by the widow of Sumair Chand. Yet the view taken by the Trial Court is the only possible and probable view that emerges from the pleadings of the parties and evidence brought on the record. I need not discuss any further else it would be open a can full of worms. I conclude by holding that the onus to prove that the respondent was trespasser in the suit property was on the appellant which he failed to discharge.

35. I find no infirmity in the decision of the courts below in not granting a decree of possession and mesne profits in favour of the appellant.

36. However since ownership of the suit property was established by the appellant the learned Appellate Court was not justified in setting aside the decree of permanent injunction granted by the learned Trial Court in favour of the

appellant. The bar created by virtue of Section 50 of the Delhi Rent Control Act 1958 only comes into play when relief claimed for relates to fixation of standard rent or ejectment/eviction of a tenant.

37. I thus restore the judgment and decree dated 15.02.03 passed by the learned Trial Court in so far it granted permanent injunction in favour of the appellant and restraining respondent from creating any third party interest or otherwise parting with the possession of the suit property.

38. Appeal in terms of para 37 above.

39. No costs.

40. LCR be returned.

December 20, 2007 PRADEEP NANDRAJOG, J.
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